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# APPENDIX.

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## ADMINISTRATION.

1. The publication of the notice of the grant of letters of administration need not be completed within thirty days from the grant of letters; it need only be begun in that time. *Montelius & Fuller vs. Sarpy.* ..... 237
2. A slave, the property of A and B, partners, is sold under an execution against A, for his individual debt. After the death of A, his administrator is not entitled to the slave on the ground that the partnership is insolvent—the administrator having no right to the partnership property.—*Darby vs. Swartz.* ..... 217
3. In an action against an administrator for money alledged to have been received by him from a debtor of his intestate, such debtor is not a competent witness, without a release, to prove the payment of such debt.—*Horine vs. Horine & Funk.* ..... 649

## ADMISSIONS.

1. An admission by a party to a suit that the suit must go against him, is not admissible against him. It is at most but an admission of law—and not an admission of facts alone.—*Crockett vs. Morrison.* ..... 3
2. It is not essential, to constitute a statement an admission, that the party should have personal knowledge of the facts admitted. Where a party believes a fact to be true upon evidence sufficient to convince him of its truth, his statement of such fact, if against his interest, is evidence against him; though of an unsatisfactory character, it is still competent.—*Sparr & Green vs. Wellman.* ..... 230
3. Little vs. Ferguson. ..... 598

## AGENT.

1. An agent is bound to execute the orders of his principal, whenever for a valuable consideration he has undertaken to perform them, unless prevented by some unavoidable accident, without any default on his part, unless the instructions require him to do an illegal or immoral act.—*Switzer & Switzer vs. Connett.* ..... 88
2. Any agent is responsible for the full loss occasioned by any violation of his duties to his principal, either by exceeding or disregarding instructions, and it is no defence that he intended to act for the benefit of his principal.—*ib.*

## APPEAL.

1. An appeal will not lie from a settlement made by the county court of the accounts of a collector who fails to settle.—*County of St. Louis vs. Sparks* ..... 201
2. If the appellant fail to prosecute his appeal from the judgment of a justice of the peace, the judgment must be affirmed. The 13th section, article 8, of act concerning justices' courts, is qualified by the 16th section of act concerning costs, and applies only to cases in which the appellant appears on the appeal.—*Martin vs. White.* ..... 214
3. A defence may be made on the trial of an appeal from a justice of the peace which was not made before the justice.—*Hall vs. Mills.* ..... 215
4. An appeal lies from the judgment of the Law Commissioner in St. Louis county in actions of replevin.—*Lewis vs. Price.* ..... 398
5. An appeal will lie from an order awarding or refusing a peremptory *mandamus.*—*ib.*
6. Perry vs. O'Hanlon. ..... 585
7. Under the act of 1835, an appeal would not lie from the decision of the county court on a *sci. fa.* issued against the sureties of an administrator for his failure to pay a judgment against him as such administrator.—*Martin & Shore vs. Milam* ..... 602

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## APPEAL FROM J. P.

1. On an appeal from a J. P., a transcript cannot be so amended as to introduce a new plaintiff.—*Kraft's adm'r vs. Hurtz & Jungk*..... 109
2. An appeal lies from the judgment of the Law Commissioner in St. Louis county in actions of replevin.—*Lewis vs. Price*..... 398
3. An affidavit for an appeal from the judgment of a J. P. on a conviction for an assault and battery, stating that the appellant is "injured" instead of aggrieved, is sufficient.—*Manion vs. the State*..... 578

## ARBITRATORS AND REFEREES.

1. Arbitrators were sworn "faithfully and impartially to discharge their duties as arbitrators, in a matter submitted to them by A and B, by articles of agreement," &c. Held to be a substantial compliance with the oath required by statute.—*Vaughn vs. Graham*. 575
2. The decision of arbitrators will not be set aside because of the admission of illegal evidence, nor for an error of judgment, no partiality nor misconduct being shewn.—*ib*.
3. In an action on an award, it is only necessary for the plaintiff to set out so much of the award as shews his right to recover. If there be any matter in the award constituting a defence, it must be set up by plea.—*Finley, et al, vs. Finley*..... 624
4. An award made under a common law reference can not, in an action at law, be resisted on the ground of unfairness in obtaining the award, or for errors of judgment in the referees. It can only be set aside in equity.—*ib*.

## ASSIGNOR AND ASSIGNEE.

1. If the maker of a non-negotiable note die, or make a general assignment of his property under the act regulating assignments of property, before the note becomes due, to make an assignor liable, it is necessary that the assignee should proceed against the estate of the deceased, or against the property in the hands of the assignee, unless he can shew that the maker of the note was, at its maturity, so insolvent that a suit against him would have been unavailing.—*Clemens vs. Collins*..... 320
2. Whether the maker was so insolvent, is a question for the jury to determine, under the directions of the court, and will depend upon the amount of the debt and the per centage thereon which might be recovered.—*ib*.
3. Blair & Gantt vs. Rankin..... 440
4. Pool & Heathman vs. Delaney & Baldwin..... 570
5. An assignment of a certificate of entry, set aside in chancery.—*Phillips vs. Moore et al*. 600
6. In an action between the maker and the assignee of a note, the consideration given by the assignee for the note is immaterial.—*Moore vs. Candell*..... 614
7. Muldrow vs. Agnew..... 616
8. An assignment of a bond or note can only be made by a writing signed by the assignor.—*Ashworth vs. Crockett*..... 636

## ASSUMPSIT.

1 A and B, brokers, have mutual dealings as such, by which A becomes indebted to B; A and C having notes of a bank in doubtful circumstances, unite and transmit the funds to B. The funds are remitted in the name of A. and received by B as the funds of A, without any notice of the interest of C. While so held by B, they are assigned to him by A, in payment of a pre-existing debt due from A. Held, that B is a *bona fide* holder without notice, and not liable to C. It is not necessary that B should give new credit to A.—*Clark vs. Loker*..... 97

## ATTACHMENT.

1. Where the goods of one are seized under an attachment against another, on an interpleader filed by the owner of the goods so taken, if the plaintiff in the attachment defend the interpleader, it will be evidence of his assent to the seizure by the officer, and such subsequent assent will render the plaintiff liable in trespass.—*Perrin vs. Claflin*..... 13
2. Where property in the hands of a third person is attached, and is retained by giving bond to the sheriff for its delivery "when and where the court shall direct," &c., according to the act regulating attachments, an order of court for its delivery is necessary to render the obligors liable on the bond. The judgment of the court against the defendant in the attachment suit, and an execution issued to the sheriff, is not sufficient to render the obligors liable on the bond.—*Brotherton vs. Thompson*..... 94
3. The form of notice of an attachment suit, which has been usually adopted in our courts, although it does not specify the "nature of the demand," is sufficient; a long continued practice of the courts will not be held incorrect, unless for very strong reasons.—*Sloane vs. Forse*..... 126

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4. Where judgment by default is rendered in an attachment suit on publication of notice, it should be set aside, on the application of defendant before the damages are assessed, upon proper terms.—*ib.*
5. St. Louis Perp. Ins. Co. vs. Ford ..... 295
6. On the trial of a plea in abatement to the affidavit in an attachment suit, charging that the defendant had fraudulently conveyed his property, the conveyance of property made by the defendant to pay a debt justly due by him, will not be held fraudulent, although defendant may, about the time of such conveyance, have made false representations as to his condition and intentions, unless the vendees in such deed be parties to the fraud.—*Chouteau & Valle vs. Sherman.* ..... 385

## BOATS AND VESSELS.

1. A steamboat is not necessarily liable for sinking a flat boat, by being out of the usual channel. There must be some negligence on the part of the officers of the steamboat to render her liable.—*Steamboat Western Belle vs. Wagner.* ..... 30
2. In a suit against a boat before a justice of the peace, a judgment by default against the boat being rendered and a motion to set the same aside being overruled, an appeal will lie from the judgment of the justice.—*Hore vs. Steamboat Belle of Attakapas.* ..... 107
3. A barge may be necessary to a boat, and as such, its hire to the boat will be regarded as a material furnished for the equipment of the boat.—*Gleim vs. Steamboat Belmont.* .. 113
4. The St. Louis Court of Common Pleas has jurisdiction of actions of trespass against boats.—*Hallaway vs. Steamboat Western Belle.* ..... 147
5. Where the captain of a boat received money to be carried, the presumption is that he was authorized to carry it; and such being the presumption, in an action for its loss, the owners of the boat are *prima facie* liable, he being their agent; and in an action against the boat, it is not necessary to alledge any compensation as agreed upon.—*Chouteau & Valle vs. Steamboat St. Anthony.* ..... 226
6. If the captain of a boat receive money to be carried, although against the usage of the trade, or the orders of the owners, they are still liable, unless they shew that the person delivering the money knew of such usage or orders.—*ib.*
7. A boat is not prohibited by the act of Congress from taking a letter containing bank notes, if the contents of the letter relates only to the remission of the notes—and such is the presumption if no evidence of its contents be given.—*ib.*
8. Common Carriers, 1, 2, 3.
9. The lien of the attachment against a boat is discharged by giving bond for the discharge of the boat; and after giving such bond, it is error in the court to render judgment ordering the sale of the boat.—*St. Louis Perpetual Insurance Company vs. Ford.* ..... 295
10. Although such judgment be erroneous, and an execution thereon irregular, yet the parties to such judgment are not liable to an action of trespass for ordering the sale of the boat under such execution.—*ib.*
11. Such execution cannot however be made under the plea of not guilty.—*ib.*
12. The plaintiff in such execution receiving satisfaction under such execution, would be liable to the owner of the boat who has acquired title subsequent to the discharge of the boat, in an action for money had and received.—*ib.*
13. The rule which imputes carelessness to a captain whose boat strikes a known rock or shoal, unless driven by a tempest, is only applicable to the navigation of the ocean, where the rocks and shoals are marked on the maps and may be avoided—and does not apply to the navigation of our rivers. In such navigation each case must be governed by its own circumstances, and be tested by the course usually pursued by skilful pilots in such cases.—*Collier vs. Valentine.* ..... 299

## BONDS AND NOTES.

1. A executes to B a note for the purchase of a tract of land on which C has a mortgage. The note is to be paid by instalments, to meet the instalments on the mortgage. A fails to pay B, by which B is prevented from paying the mortgage. This is foreclosed, and A becomes the purchaser of the land under the mortgage. Held, that A, by his own fault, caused the failure to pay the mortgage, and cannot set up this as a defence to the note.—*Clark vs. Condit.* ..... 79
2. The terms of the note constitute a latent ambiguity which may be explained by parol evidence.—*Cox vs. Beltzhoover.* ..... 142
3. Assignor and Assignee, 1, 2
4. In an action on a bond given in an action of detinue by the plaintiff in the latter action, it is no defence to the suit that the affidavit in the action of detinue varied in its description of the property from the description in the declaration.—*McDermott vs. Doyle.* 443
5. The objection should have been made to the affidavit, in the original suit, and not having been made, will not be available in a suit on the bond.—*ib.*

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6. The suit upon the bond for a failure to deliver the property, is a mere continuation of the original suit, and must be brought in the same court in which the original suit is brought.—*ib.*
7. A note is made payable "so soon as the amount can be made on a suit in which B is plaintiff, and the heirs and legal representatives of C are defendants." At the time there are two suits pending, one literally corresponding with the case described in the note; in the other B is plaintiff, and the widow, heirs and legal representatives of C are defendants. In the absence of other proof, the note will not be held due until the money is made in the former, though the description might be shown to apply to the latter, it being imperfect as to the latter.—*Allen vs. Davis.* ..... 479
8. Pool & Heathman vs. Delaney & Baldwin. ..... 570
9. The endorser of a negotiable note is not liable by reason of the insolvency of the maker, but, to hold an endorser liable, there must be a demand and notice of non payment.—*Davis vs. Francisco.* ..... 572
10. Where, however, the maker is dead at the time of the endorsement, no demand can or need be made.—*ib.*
11. Moore vs. Condell. ..... 614
12. The rules relative to endorsements in blank do not apply to notes which are not negotiable. A blank endorsement of such notes only gives the person to whom the payee actually transferred the note the right to fill up such endorsement to himself. It does not authorize a subsequent endorsee to fill up the endorsement in his own name, nor does it authorize the immediate endorser to fill the blank with the name of a stranger. *Muldrow vs. Agnew.* ..... 616
13. The measure of damages to be recovered against an endorsee, is the consideration received by him, with interest.—*ib.*
14. Ashworth vs. Crockett. ..... 636

## COMMON CARRIERS.

1. Common carriers may be carriers of money, as well as of goods. This, however, depends upon the usage of the trade. But where no usage is shown, the receiving the money and agreement of the carrier to deliver it, raise the presumption that such is his customary employment.—*Chouteau & Valle vs. Steamboat St. Anthony* ..... 226
2. Where the carrier is prohibited from carrying money, or it is the usage of the trade not to carry money, if a person acquainted with the prohibition or usage deliver money to the carrier, the owners will not be responsible for its loss.—*ib.*
3. Bank bills entrusted to a carrier, are regarded as money.—*ib.*
4. Chouteau & Valle vs. Steamboat St. Anthony.—*ib.*
5. In an action against a carrier, on a bill of lading, for a loss of freight, although it appear that his boat was not seaworthy, it is yet competent for him to shew that the loss was in fact occasioned by the excepted perils of the river, and not by the unseaworthiness of the boat. Although a carrier be in default, yet if the loss were not occasioned by his default, but must have happened without such default, he is not liable.—*Collier vs. Valentine* ..... 299

## CONSTITUTION.

1. The act of 1847, by which suits and process against volunteers who are absent from the State are suspended until the regiment returned, is constitutional.—*Edmondson vs. Ferguson* ..... 344
2. The act suspending process against absent volunteers, held constitutional. Ferguson vs. Edmondson, 11 Mo. Rep., approved.—*Lindsey vs. Burbridge, et al* ..... 545

## CONSIGNEES.

1. Where goods are consigned to a factor to be sold at a fixed price, if he dispose of them at a less price, he is responsible to his principal for the price fixed him, and is to be regarded as a purchaser at that price, and not as a mere stranger, guilty of a tortious conversion.—*Switzer & Switzer vs. Connett* ..... 89

## CONTRACTS AND PROMISES.

1. A carpenter executes work for a butcher, to be paid for in fresh meat—no time, place, or kind of meat for payment being specified. After the work is done, the carpenter receives at divers times, at the butcher's stall, such meat as he then needed. Held, that the meat was payable at the butcher's stall, in such quantities as the carpenter might need and the butcher have on hand.—*Kraft's adm'rs vs. Hurtz & Jungk* ..... 109

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2. An agreement in writing to convey such lots as the grantor shall select, cannot be changed by parol so as to require the grantor to convey such lot as the grantee may select.—*Wildbahn vs. Robidoux* ..... 659

## CONVERSION.

1. Every unlawful taking of the chattels of another, with the intent to convert them to the use of any other than the owner, and every unlawful taking which destroys or alters the nature of the chattels, is a conversion.—*Sparks vs. Purdy* ..... 219
2. But the bare removal of the chattles of another without any intent to deprive him of their possession, and which does not affect their condition, is no conversion.—*ib.*
3. The return of chattels after a conversion will not defeat the right of action, but will only go in mitigation of damages.—*ib.*

## COSTS.

1. The provision of our statute which declares that where an amount below the jurisdiction of the court is recovered, the plaintiff shall have judgment at his own costs, does not apply where the declaration shews a claim below the jurisdiction of the court, and the question is raised by a demurrer.—*The State vs. Steel* ..... 553

## CORPORATIONS.

1. A public municipal corporation is not, like a private corporation, liable to be garnisheed for a sum due to an officer of such corporation as part of his salary.—*Hawthorn vs. St. Louis* ..... 59
2. The charter of a city giving power to "regulate the police" of the city, authorizes an ordinance to punish vagrants—and such ordinance does not conflict with the general law concerning vagrants.—*St. Louis vs. Bentz* ..... 61
3. The act of the Legislature authorizing the city of St. Louis to make quarantine regulations, is not a delegation of legislative power, and such ordinances are not against the constitution of this State or of the United States.—*Metcalf vs. St. Louis* ..... 102
4. Courts will not take judicial notice of the ordinances of a corporation.—*Cox vs. City of St. Louis* ..... 431

## COUNTY BUILDINGS.

1. The justices of the county courts have the control of the county buildings, and have power summarily to expel intruders from such buildings. But where a person has had possession of a public building by consent or permission of the court, he should be notified and have a reasonable time to leave; and if summarily expelled by order of the justices, they will be liable.—*Sparks vs. Purdy* ..... 219
2. An order of the county court for the expulsion of a person in possession of the public buildings, is not a judicial proceeding, so as to exempt the justices from liability even for an improper or illegal order.—*ib.*

## COURTS.

1. The St. Louis Court of Common Pleas has jurisdiction of actions of trespass against boats.—*Holloway vs. Steamboat Western Belle* ..... 147
2. Nolley, et al, vs. Callaway County Court ..... 448
3. The courts of this State have power to determine titles to land lying in the State, in a contest between citizens of this State, although such contest involve the construction of acts of Congress.—*Perry vs. O'Hanlon* ..... 585
4. In such cases, an appeal will lie to the Supreme Court of the United States.—*ib.*

## DAMAGES.

1. On an inquiry of damages, if the measure of the damages be the actual damage sustained, the plaintiff must offer proof of his damage, or he will only recover nominal damages. If, however, the compensation be fixed by the contract, and the contract and breach be admitted by the pleadings, *prima facie* the amount of compensation is the measure of damages, without proof: the defendant may, however, by proof of damage actually sustained, reduce such amount.—*Webb vs. Coonce* ..... 9
2. In an action against an inn-keeper for the loss of goods committed to his charge, the jury may give interest upon the amount of the goods lost, by way of damages, but are not compelled to give such damages.—*Sparr & Green vs. Wellman* ..... 230
3. There is no general rule by which to distinguish a penalty from stipulated damages.—*Gower vs. Saltmarsh* ..... 271

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## DEEDS.

1. A deed is valid though not acknowledged, and its want of acknowledgment does not constitute a defect of title, so as to constitute a defence to the payment of the purchase money for the land conveyed.—*Cooley vs. Rankin* ..... 642

## DEPOSITIONS.

1. Objections to the form of questions in depositions must be made at the time the depositions are taken: it is too late to make them at the trial.—*Glasgow vs. Ridgeley & Allen.* 34
2. In determining the sufficiency of a notice to take depositions, the day on which the notice is given or the depositions are to be taken is to be included.—*Littleton vs. Christy* ... 390
3. The certificate of a judge of probate or of a clerk of a county court is not competent evidence that a person is public administrator. They can only certify to the correctness of copies of records of their several courts shewing the appointment of such officer.—*ib.*

## DEVISE.

1. A devise by a husband to his wife "during her natural life or widowhood" is not in restraint of marriage so as to render the condition invalid. The estate so devised is terminated by the marriage.—*Walsh vs. Matthews and wife* ..... 131
2. Culbertson, et al, vs. Matson, et al ..... 494

## DOWER.

1. A widow takes her dower in her husband's estate, as against those whose rights to such estate originate at the same time with her right to dower, according to the law in force at the death of the husband, but as against those who have specific rights against such estate prior to the death of her husband, her right to dower will depend upon the law in force at the time such rights originated.—*Kennerly vs. Missouri Ins. Co* ..... 204
2. A widow, whose husband died in 1840, has no right to dower in lands which had belonged to him, but had been sold under execution in 1827, on judgment rendered in 1824—the law then in force barring the widow of dower in land sold under execution.—*ib.*

## EJECTMENT.

1. A possession of less than twenty years will prevail against a subsequent possession of less than twenty years, provided the former was under a claim of right and has not been abandoned.—*Crockett vs. Morrison* ..... 3
2. A party having no title cannot question the correctness of the location of a confirmation made by a U. S. Surveyor under the act of 1824.—*Boyce vs. Papin* ..... 16
3. Possession is only constructive notice.—*Frothingham, et al, vs. Stacker* ..... 77
4. Liens, 5, 6, 7.
5. Vendor and Vendee, 2, 3.
6. Page vs. Scheibel ..... 167
7. Eberle vs. St. Louis Public Schools ..... 247
8. In ejectment, a plaintiff must show title in himself before the ouster laid in his declaration.—*Buxton vs. Carter* ..... 481
9. Double damages cannot be recovered in ejectment.—*Ayres vs. Draper* ..... 548
10. A notice to quit must be absolute. A notice demanding possession, and declaring that "if possession is not given by a certain day, rent at a given rate will be claimed," is not sufficient.—*ib.*

## EVIDENCE.

1. Where there is a subscribing witness to an instrument, he must be called, or his absence accounted for; and without this, it is not competent to prove its execution even by the grantor.—*Glasgow vs. Ridgeley & Allen.* ..... 34
2. A witness must state facts and circumstances, and not his inferences or opinions. It is for the jury to draw conclusions from the facts in connexion with all the attending circumstances as testified by the witnesses.—*Sparr & Green vs. Wellman.* ..... 230
3. A party is a competent witness in his own favor, in cases in which the defendant has been guilty of some tortious act, or of some fraud, and where no other evidence can be had, as in the case of a bailee who breaks open a box committed to his care, and steals the contents; and the rule also extends to inn-keepers whose lodgers are robbed.—*ib.*
4. In all such cases the tort or robbery must first be proved by evidence *aliunde*—then the plaintiff can by his own oath establish the articles stolen or lost.—*ib.*

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5. The evidence to establish a tort or robbery must be clear, to authorize the admission of plaintiff's oath. Of the weight of the preliminary evidence the court is to judge.—*ib.*
6. Evidence improperly admitted by the court, may be subsequently excluded, and the error of its admission will thus be cured.—*ib.*
7. The refusal of a county treasurer to pay a warrant drawn upon the treasury, is presumed to be based upon the want of funds in the treasury.—*Nolley, et al, vs. Callaway County Court.* .... 448
8. The declaration of the treasurer assigning the want of funds as the reason for not paying the warrant, are not admissible. His declarations assigning other reasons for his refusal would be admissible to rebut this presumption.—*ib.*
9. The return of an officer, shewing that he had acted under the directions of the plaintiff, is evidence in his favor.—*The State vs. Steel.* .... 553

## EXECUTION.

1. An execution made returnable to a day out of term is only voidable, and the officer is bound to execute i.—*Milburn vs. the State.* .... 188
2. Executions being by law returnable to the term next succeeding their issuing, unless the plaintiff otherwise order, if by mistake one is made returnable to a day in vacation later than the next succeeding term, the officer is yet bound to make return to such term, and for failure to make such return is liable for the full amount of the debt.—*ib.*
3. St. Louis Perpetual Insurance Company vs. Ford. .... 295
4. An execution issued by a justice of the peace, and not returnable according to law, is not merely erroneous, but is void.—*Stevens vs. Chouteau.* .... 382
5. The levy of an execution upon property sufficient to satisfy the execution, its release and return the property to the defendant upon an agreement with the plaintiff, is not *per se* a satisfaction of the execution or judgment.—*Williams vs. Boyce.* .... 537
6. A, having purchased land of B, and given his notes for the payment of the purchase money, fails to pay, and B obtains judgment on one of the notes before a justice of the peace. An execution is levied by the constable on property sufficient to satisfy the judgment. By an agreement between A and B, original contract is to be cancelled—A to give up the land to B to release the property, enter satisfaction of the judgment and give up the notes. B releases the property levied on, and offers to comply with his contract, but A refuses to give up the land. Another execution is issued by the justice of the peace and returned *nulla bona*. An execution then issued by the clerk of the Circuit Court and levied on the land of A, will not be quashed on motion setting out the foregoing facts.—*ib.*
7. A return "not levied for want of sufficient goods and chattels," is not a nullity, but may be a sufficient return. *Prima facie*, it is sufficient.—*The State vs. Steel.* .... 553
8. Where an execution is placed in the hands of a constable shortly before the expiration of a term for which he had been elected, but is not returnable until after the commencement of a term for which he is re-elected, and not until after he has given bond and had the same approved for the latter term, the securities on the first bond will not be liable for a failure to pay over the money on the return day, there being no obligation on the constable to pay, and no default until that time.—*Warren & Cornwell vs. the State.* .... 583
9. Sales under execution will not be set aside, because the property was not advertised for sale on two different days, by different sets of advertisements, it appearing that such second advertisement was induced by an additional levy, and it also appearing that no injury resulted from the sale under such circumstances.—*McDonald vs. Cook* .... 632

## FORCIBLE ENTRY AND DETAINER.

1. A, having the possession of a lot, leases to B. The lease is afterwards cancelled, and the premises surrendered to A. In a few days C is found in possession. A not having abandoned his possession, this entry by C is a disseizen, and will sustain an action of forcible detainer, upon the refusal of C to deliver possession on demand to A.—*Warren vs. Ritter & Ritter.* .... 354
2. The complaint alledging a forcible detainer on a certain day within three years before suit, is sustained by evidence of detainer on any day within such time.—*ib.*
3. Only a person who has been in possession of land can maintain an action of forcible entry and detainer or of unlawful detainer.—*Holland vs. Reed.* .... 605
4. The assignee or vendee of a landlord cannot maintain such action against the tenant.—*ib.*

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## FRAUD.

1. Where by a deed of trust goods in a store are conveyed, but the possession is left with the grantor, who is permitted to go on and sell, such possession is only *prima facie* evidence of fraud.—*Milburn vs. Waugh & Corthron.* .... 369
2. Chouteau & Valle vs. Sherman. .... 385
3. A voluntary conveyance is not *per se* fraudulent as against creditors prior or subsequent. The *bona fides* of every such conveyance is a question of fact for the jury, under all the circumstances attending its execution.—*Lane vs. Kingsberry.* .... 402
4. Where a husband makes a voluntary conveyance for the benefit of his wife, a precedent conveyance made by him for her benefit is competent evidence on the question of the good faith of the latter.—*ib.*
5. To determine the validity of a voluntary conveyance as against creditors, every circumstance tending to shew the pecuniary condition of the grantor at the time of such conveyance is admissible.—*ib.*
6. A father having for a fraudulent purpose conveyed land to trustees for the benefit of two of his children, after his death, his heirs cannot in equity set aside such conveyance on the ground of fraud.—*Ober vs. Howard.* .... 425
7. A voluntary conveyance by a person in debt, is not, as to subsequent creditors, fraudulent *per se.*—*Pepper vs. Carter & Minor.* .... 540
8. A voluntary conveyance of a lot worth only about forty dollars, by a parent at the time in possession of much valuable property, although at the same time embarrassed by debts, will not, as to subsequent creditors be deemed fraudulent, without proof of actual fraud.—*ib.*
9. Murray vs. Fox, et al. .... 553
10. A mistake in the representation of facts as to the quality of, or title to land, by which a party is induced to purchase, will be held a fraud in equity, however innocently such mistake may have occurred.—*Glascock vs. Minor.* .... 655
11. A mistaken opinion as to title, however, the means of information being equally accessible to both vendor and purchaser, is no fraud.—*ib.*

## GARNISHEE.

1. Money having been deposited with the Bank by the cashier of another Bank, who took certificates of deposit in his own name, and attachment suits being afterwards brought against such last named Bank, and the former garnisheed for the funds so deposited—at the same time the holders of the certificates of deposit institute suit for the recovery of the money deposited: by defending the garnishment and calling upon the attaching creditors to shew to whom she should pay, the Bank does not become liable for the interest on the deposit.—*Cohen vs. St. Louis Perpetual Insurance Company.* .. 374

## GUARDIANS AND WARDS.

1. Guardians have not power to release a debt due their wards.—*Horine vs. Horine & Funk.* 649

## HABEAS CORPUS.

1. Neither the Supreme Court, nor any other court or Judge can on a petition for a *habeas corpus* investigate the legality of a conviction in, or a judgment of a court of competent jurisdiction.—*Exparte, Toney.* .... 661
2. A person convicted and sentenced as a free person to imprisonment in the penitentiary can not be discharged on a *habeas corpus*, on the petition of a person alledging such convict to be his slave.—*ib.*
3. If a slave be committed and sentenced to the penitentiary, such fact not appearing in the record, it is an error of fact, and may be corrected by the court in which the judgment was rendered, on a writ of error *coram vobis.*—*ib.*

## HEIRS.

1. The term heir does not always refer to a person whose ancestor is dead, but it is often used to designate the presumptive heir of a person in existence. Thus, in a note payable on demand to "the heirs of A." A being alive, it may be shewn by averment that the term "heirs" was intended to mean the presumptive heir.—*Cox vs. Beltzhoover.* .. 142

## HUSBAND AND WIFE.

1. A husband and wife residing in Louisiana, and having during the marriage acquired a large amount of property, temporarily removed to Missouri. While in Missouri a part of the money belonging to the *community*, is by the husband invested in real es-

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tate, and the title taken in his own name. They subsequently return to Louisina, and there the wife is divorced. The land in this State will be considered in equity, as held by the husband, in trust for the wife, to the extent of her interest in the money invested in its purchase, there being no evidence of any assent on the part of the wife to a change in the property by the investment.—*Depas vs. Mayo & Wife.* .... ..... 314

2. The law of the place, in which the land is situated, governs the transfer of the land.—*ib.*
3. Where the wife lives apart from her husband, and such fact is known, the husband is not liable for articles furnished her, unless it appear that he consented to the separation, or had by his own misconduct induced the separation.—*Rutherford vs. Coxe..* ..... 347
4. One who, without the authority or consent of the husband, leaves money with the wife and she applies it to her own use, the husband will not be liable.—*Andrews vs. Ormsbee.* ..... 400
5. Lane vs. Kingsberry. ..... 402

A, living in the State of Tennessee, and being indebted to B, conveyed certain slaves in payment of the debt: A being at the time otherwise free from debt. On the same day by a voluntary conveyance, duly executed according to the laws of Tennessee, B conveys the slaves to C in trust for the wife of A and her children. A then moves to this State with his family, bringing with him the slaves, and continuing to exercise acts of ownership over them, his wife passively submitting to his assumed ownership. After some years residence in this State, A becomes involved in debts, and his creditors levy on and sell the slaves as his property; the wife at the time of the levy and sale proclaiming her title. *Held:*

6. So far as A's creditors are concerned, it is immaterial, whether B at the time of his conveyance to C was insolvent, or designed to practice fraud.—*Murray vs. Fox, et al.* ... 555
7. That by the deed the title was vested in C for the benefit of A's wife and children, and the passive submission of the wife, and the assumed ownership of A, do not affect her title.—*ib.*
8. The title being vested in C by the deed properly executed, the removal to this State, and failure to record the deed here, does not affect the rights of the wife.—*ib.*
9. A bond given to a *feme sole*, after her marriage can only be reduced into possession by her husband by his receiving satisfaction of the debt or by altering the security.—*Pickett & Pickett vs. Everett.* ..... 568
10. It is not converted into possession by the husband taking possession during her life, and after her death transferring it to another.—*ib.*

## INDICTMENT.

1. The wife, as well as the husband, may be indicted for keeping a bawdy-house. They may be jointly indicted.—*State vs. J. & C. Bentz*..... 27
2. One of two counts in an indictment being good, a motion to quash will not lie.—*State vs. Rector* ..... 28
3. An indictment for an assault upon a child under ten years of age, "with intent feloniously to ravish and feloniously to carnally know," &c., is good. The words "to ravish" may be rejected as surplusage, and do not vitiate. The word "ravish" applies to either kind of rape, as defined by the statute.—*McComas vs. The State*..... 116
4. A prosecutor is not necessary on an indictment for a trespass to school lands. A prosecutor is only necessary in cases of trespass to private property, and not in cases of trespass to the property of the State or of the counties.—*State vs. Roberts* ..... 510
5. On an indictment for a felonious assault and battery, under the 38th sec., 2nd art. of act concerning crimes and punishments, if the wound inflicted be a dangerous wound likely to produce death, it is sufficient, although the weapon be not a deadly weapon.—*Carrico vs. the State* ..... 579
6. If the weapon used be a deadly weapon, or likely to produce great bodily harm, it is not necessary that the wound should be a dangerous wound.—*ib.*

## INFANTS.

1. An infant may release a debt due him, and it cannot be objected to by a third person.—*Horine vs. Horine & Funk*..... 649

## INSURANCE.

1. An insurance declared to be "upon the freight bill" of a steamboat, is an insurance that the boat shall earn freight; and the insurer is as responsible if the boat fail to earn freight by an accident to the boat, as by any damage to the cargo.—*Field vs. Citizens' Insurance Company* ..... 50
2. Where such a policy was executed, and the boat was injured in the hull so as to lose the voyage, by abandoning the freight bill, she would recover on the policy.—*ib.*

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3. An agreement, however, after an accident by which the boat had lost the voyage, "that the insurers would be bound by their policies on cargo and freight bill by a transfer of same" to another boat, exempts the insurers from liability to first boat.—*ib.*
NAPTON, J., dissenting on this point.
4. Where, by the conditions of a policy of insurance, notice of the loss is required to be given *forthwith*, it is only necessary that the notice should be given *with due diligence under all the circumstances of the case.*—*St. Louis Ins. Co. vs. Robert Kyle* ..... 278
5. The receiving a notice, and failing to make objection to its being given in time, is no waiver of the notice.—*ib.*
6. Formal defects in the preliminary proof of loss may be regarded as waived by the insurers pleading their refusal to pay on other grounds, and evidence of such waiver may be given under an averment of performance.—*ib.* .....

## INJUNCTIONS.

1. An injunction cannot, on the application of a defendant, issue from one court to enjoin an execution from another.—*Pettus vs. Elgin* ..... 411
2. The collection of the purchase money of a tract of land will be restrained if it appear that there is a defect in the title, until the purchaser is indemnified against loss, it appearing that the solvency of the vendor is doubtful.—*Jones vs. Staunton* ..... 433
3. An injunction which had been granted to restrain proceedings to complete sales made under an execution, and to set aside such sales, being dissolved, the court of chancery has no power to render a judgment against the complainant for the amount of his judgment at law.—*McDonald vs. Cook* ..... 632

## JEOFAILS.

1. The statute does not reach judgments by default.—*Neidenberger vs. Campbell, et al* ..... 359

## JUDGMENTS.

1. Where a plaintiff, who has recovered a judgment, receives satisfaction of the same, he cannot afterwards sue out a writ of error to reverse the judgment.—*Cassel vs. Fagan & Webster* ..... 207
2. St. Louis Perpetual Insurance Company vs. Ford ..... 295
3. A judgment of a foreign court having jurisdiction of the persons and subject matter, is conclusive between the parties, in the courts of this State.—*Destrehan vs. Scudder* .. 484

## JURORS.

1. In a suit in which a town is a party interested, the citizens of such town are not competent jurors.—*Eberle vs. St. Louis Public Schools* ..... 247

## LANDLORDS AND TENANTS.

1. Under the act concerning landlords and tenants, upon a failure of payment of rent, the landlord is entitled to his action for the recovery of his possession against the tenant or other person in possession, and cannot be deprived of his remedy by a transfer of the possession, or by an abandonment by his tenant and intrusion of a stranger.—*Willi vs. Peters* ..... 395
2. A, having leased certain premises, procures B to become surety for the payment of the rent, and to indemnify the surety, executes a mortgage on certain lands, by which he provides "if he fail to pay the whole or any part of the rent, B may sell," &c. A, alleging a failure on the part of the lessor to comply with the terms of the lease, refuses to keep the premises the full term and to pay the entire rent, and B becomes liable for the whole rent. A having abandoned the possession, B compromises with the lessor, and gives the lessor possession before the expiration of the lease. B then advertises to sell under his mortgage. *Held:* The lessor taking possession under such circumstances, does not release A from the payment of the rent.—*Destrehan vs. Scudder* ..... 484
3. It appearing that the compromise was made by B in good faith, although not binding on A, yet it being manifestly to his advantage, a court of equity will not restrain B from enforcing his legal rights under the mortgage.—*ib.*

## LEASES.

1. If, by the terms of a lease, rent is to be paid on a certain day, and if not paid within ten days thereafter, the lease to be forfeited, a tender before the day will not prevent a forfeiture.—*Illingworth & Clark vs. Miltenberger* ..... 80

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2. A lease made by an agent in his own name is void, and the tenant entering under such lease is a tenant at will, and as such, entitled to a notice to quit before an action of ejectment will lie against him.—*Murray vs. Armstrong*..... 209
3. Tenancies at will may be created without writing, and are not within the provisions of the act regulating conveyances.—*ib.*
4. The assignor of a lease is not liable to the assignee for a breach of the covenants in the lease by the original lessor.—*Blair & Gantt vs. Rankin*..... 440
5. The words "grant" or "demise," used in the assignment of a lease, do not create an implied covenant against the assignor.—*ib.*
6. Where, by the terms of a lease, it is covenanted that the land is subject to a payment of a certain sum per annum, and *no more*, it is no breach that there was, at the time, a right of dower in the land which afterwards becomes an incumbrance to the extent of the annual value of such dower.—*ib.*
7. Landlords and Tenants, 2, 3.
8. A, having purchased a lot from B, takes a lease to the same from C; A then sells the land to D, who takes a lease from B, (who still claims the land.) As to C, the possession D will be regarded as the possession of A, the lessee of C.—*Ayres vs. Draper*..... 548

## LIENS.

1. The act of 1843 "concerning landlords and tenants in St. Louis county," gives no lien unless the rent be due and certain.—*Glasgow vs. Ridgeley & Allen*..... 34
2. The lien of a judgment will hold against a prior unrecorded deed.—*Frothingham, et al, vs. Stacker*..... 77
3. Under the act entitled "An act for the better security of mechanics, &c., in the city and county of St. Louis," Sess. Acts 1842-3, where the lien is filed and a judgment obtained before a justice, the clerk can issue an execution without a return of *nulla bona* on an execution issued by the justice.—*Illingworth & Clark vs. Miltenberger*..... 80
4. Under the act of 1843, concerning liens of mechanics, in the city and county of St. Louis, a *sci. fa.* on such lien can only issue from the Circuit Court. The Court of Common Pleas has no such jurisdiction.—*Gaty, McCune & Glasby vs. Brown, et al.*.. 138
5. If at the time the lien attached, the defendant in the execution was in possession, as against the purchaser under execution, the title of defendant cannot be disputed, nor can an outstanding title be set up to defeat his recovery of possession.—*Page vs. Hill*, 149
6. But if defendant in the execution had not possession at the time the lien attached, but had conveyed the land by deed, although the same be not recorded, his vendee will be deemed as holding adversely to him, and will be entitled to dispute his title, or to set up an outstanding title to defeat a recovery by a purchaser under execution; although as against the title of such purchaser the unrecorded deed will be void.—*ib.*
7. The vendee of the defendant in the execution, claiming under a deed made subsequent to the attaching of the lien, can not, however, make such defence, but is regarded as tenant under the defendant.—*ib.*
8. St. Louis Per. Ins. Company vs. Ford..... 295
9. The provisions of the act of 1841, concerning liens of mechanics, &c., which require a sub-contractor to give notice to the owner of a building of his intention to do work, &c., before commencing the work, are repealed by the act of 1843, so far as St. Louis county is concerned. This last act is specially applicable to St. Louis county, and is not repealed by the general law of 1845.—*Speilman* vs. *Shook; Renon & Papin*,.... 340
10. There need be no contract between the owner of a house and a sub-contractor, to give the latter a lien. He has only to give the notice required by statute after doing the work.—*Urin & Shook vs. Waugh*,..... 412

## LIMITATIONS—STATUTE OF.

1. The limitation of three years for the presentation of demands against the estate of deceased persons, applies to suits in all other courts, as well as to those before the County Court.—*Montelius & Fuller vs. Sarpy*,..... 237

## MONEY HAD AND RECEIVED.

1. Where goods which have been conveyed by two mortgagees are sold under an execution, in favor of a third party, in an action of assumpsit for money had and received, brought by the elder mortgagees against the plaintiff in the execution, they are only entitled to recover the amount due on their mortgage, and not in addition the amount due on the junior mortgage.—*Glasgow vs. Ridgely & Allen*,..... 54

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## MORTGAGE.

1. A mortgage, with a power to sell in the mortgagee, is valid.—*Destrehan vs. Scudder.* .. 484
2. A party may purchase land under a sale on a mortgage to himself to secure a debt due to the mortgagee.—*Cooley vs. Rankin.* ..... 642

## NEW MADRID CLAIMS.

1. Where the original owner of land in New Madrid injured by earthquakes, sells such land, a location of the other land made in lieu thereof, subsequently to such sale, vests the title to such located land in the vendee as the legal representative of such original owner, and although the deed be not recorded, it is valid between the parties, and any conveyance of the located land made by the original owner, will be inoperative, the title to such land never having vested in such original owner.—*Hill vs. Page.*. ..... 150
2. Nor would a deed made by the original owner after such location conveying the injured land to a third person, vest the title of the located land in such person, as the representative of the original owner. *Que.* as to the effect of such conveyance?—*ib.*

## NUISANCE.

1. What constitutes a nuisance is a question of law.—*Smith vs. McConathy.* ..... 517
2. In an action for a private nuisance it is not necessary to alledge or prove any special damages.—*ib.*
3. In a private action for a public nuisance, special damages must be averred and proved.—*ib.*
4. A distillery, with styes in which large quantities of hogs are kept, the offal from which renders the waters of a creek unwholesome, and the vapors from which render a dwelling uninhabitable, is a *nuisance.*—*ib.*
5. In an action for a private nuisance, evidence cannot be given of injuries other than those alledged in the declaration.—*ib.*

## OFFICERS.

1. An officer will not be presumed to have applied the public funds to his private purposes, and hence as a general rule in an action in which the official conduct of an officer is in question, his pecuniary embarrassment would not be competent evidence; but where it has been shewn that those having the right to control his acts have permitted him to use such funds, his pecuniary embarrassments are competent as a link in the chain of evidence establishing the defence of the secnrities.—*Nolley, et al, vs. Callaway County Court.* ..... 448

## PARTNERSHIP.

1. Our statute which makes all contracts which by the common law are joint only, joint and several, does not affect the law governing liabilities of partnerships. Hence, a note given by the individual member of a firm for the sole use of one member, is not to be treated as a partnership debt, and will not in equity be allowed against the property of an insolvent firm.—*Burns vs. Mason.* ..... 469
2. A balance which may be due on a settlement of a partnership, can not be set up in equity against a note given by one partner to the other, in the hands of an assignee, on the ground that the assignor had left the State, leaving no property in the State: the note not being in any way connected with the partnership, and the assignment being made prior to the removal of the assignor.—*Pool & Heathman vs. Delaney, et al.* ..... 570
3. It seems that such balance may be set up on such ground in equity against the note in the hands of the payee.—*ib.*
4. *Que.* Could it be set up against the assignee if the assignor had removed prior to the assignment?—*ib.*
5. An admission of indebtedness made by one partner will not bind the other members of the firm, unless made during the existence of the partnership.—*Little vs. Furguson.* .. 598
6. A deposition proving such admission, but not satisfactorily establishing it at a time prior to the dissolution of the partnership, may be excluded by the court, and need not be submitted to the jury with instructions.—*ib.*

At the request of B, one of a firm composed of A & B, C becomes surety for A, on a note given by A, in his individual character, the proceeds of which go to the benefit of the firm. Held:

7. That such requeat does not make B liable to C, for the money paid by him on such note.—*ib.*
8. Nor would he be liable in such case without an express promise to pay C.—*Asbury vs. Flesher,* ..... 610

## PENALTY.

1. When A agreed to furnish B, with freight to the amount of of 2,000 bushels of wheat,

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at twelve and a half cents per bushel, and 2,000 bushels at fifteen cents per bushel, and sufficient water for B to go out of the river with his boat with a load of 4,000 bushels on five and a half feet water, provided B, should make the trip by a given day; and on the failure of any of the conditions by A, to pay B, the full amount of freight at the stipulated prices, and in default of the payment to pay $550; the condition to pay the $550 was held to be a penalty.—*Gower vs. Saltmarsh.* ..... 271

2. Watts vs. Watts. ..... 547

## PRACTICE IN CHANCERY.

1. After leave to answer in chancery is asked and given, it is improper to demur alone. The defendant, if he wish to demur, must plead or answer to some material fact. It is, however, in the discretion of the court to let the demurrer stand.—*Ulrici vs. Papin, et al.* ..... 42
2. It is no ground for demurrer to a bill by which land may be affected, that a greater part of the land lies in a county other than that in which the suit is brought. This defence must be made by a plea to the jurisdiction.—*ib.*
3. Although land may be affected by the decree, yet, if the primary objects of the bill do not relate to land, it need not be brought in the county where the land lies.—*ib.*
4. The administrator and vendee of the real estate of the deceased may properly join in a bill for an account, and conveyance of lands held in trust for the deceased.—*ib.*
5. A demurrer that is too general, must be overruled.—*ib.*
6. In a bill for an account and for a conveyance of the balance of lands held in trust to satisfy a debt, after payment of the debt, it is not necessary to tender the money, nor to offer to redeem.—*ib.*
7. The objection to a bill for an account and conveyance of land held in trust, that there are purchasers without notice who should be made parties, cannot be made by demurrer, but must be raised by plea in abatement, or insisted on in the answer.—*ib.*
8. A, by a covenant, transfers shares of stock in different Insurance Companies to B. After such transfer the shares are sold under execution against A, and purchased by different persons. A bill filed against the several companies and the purchasers of the stock, to compel a transfer on the books of the companies to B, is multifarious.—*Ferguson vs Paschall, et al.* ..... 267
9. On a demurrer to a bill in chancery, the court will not regard the exhibits as a part of the bill, nor will the court look into the exhibits to see if they sustain or contradict the allegations in the bill.—*Tesson vs. Tesson.* ..... 274
10. Where a decree had been rendered against infants, proceedings to set aside such decree by the infants, on coming of age, can only be had on notice to the other parties to the decree.—*Ruby vs. Strother.* ..... 417

A and others having filed a bill in chancery to compel B to convey lands alledged to have been purchased by B in trust, B prepares an answer, makes oath to it and is about to file it when the bill is dismissed. Some years after this, B having died, another bill is filed for the same purpose by the same parties, against the heirs and representatives of B. *Held:*

11. It appearing that many of the transactions must have been known exclusively to B and unknown to his heirs, they should be permitted to make the answer thus prepared by B a part of their answer and evidence in their favor.—*Culbertson, et al, vs. Matson, et al.* 493
12. A placed money in the hands of B to purchase land for the benefit of C, on a refusal by B to convey the land thus purchased to C, a bill to enforce such trust could not be brought by A, but only by B, the *cestui que trust*—*ib.*
13. Nor could A devise the land thus purchased so as to enable D, the devisee, to compel a conveyance to himself.—*ib.*
14. If D claim a conveyance from B under a transfer of C.'s equitable right, C must be made a party to the bill.—*ib.*
15. A bill in equity will not lie to recover a penalty. Thus where a bond was given bearing six per cent interest, and a mortgage to secure its payment, in which was a proviso, that if payment on the bond were not punctually made, it should bear four per cent. more. Failure to pay one year's interest being made, the penalty was paid, and then the bond and six per cent. were paid off. A bill to foreclose for the four per cent. penalty for a second failure will not be sustained.—*Watts* vs. *Watts.* ..... 547
16. Phillips vs. Moore, et al. ..... 600
17. McDonald vs. Cook. ..... 632
18. In a bill for the specific performance of a contract to convey land, it is not necessary to alledge that the contract was in writing. The presumption is that the contract is valid.—*Wildbahn* vs. *Robidoux.* ..... 659
19. Where to such a bill defendant pleads that the contract was not in writing and was void, and at the same time answers denying the contract set up in the bill, the answer overrules the plea.—*ib.*

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20. To entitle the plaintiff to a decree against such answer, a contract in writing must be shewn.—*ib.*

## PRACTICE IN CRIMINAL CASES.

1. A motion for a new trial comes too late after a motion in arrest of judgment has been made. The latter motion assuming that the verdict is right.—*McComas vs. The State*, 116
2. It is not competent for the court, on a demurrer to a plea in abatement to an indictment, to enter judgment, assessing the punishment of the defendant. A plea of not guilty must be entered in all cases in which the defendant does not confess the indictment to be true.—*Meader vs. The State*, ..... 363
3. The State vs. Roberts, ..... 510

## PRACTICE OF LAW.

1. Where there is no evidene to authorize a recovery by plaintiff, the court can so instruct jury. Such instruction is in effect a demurrer to the evidence.—*Lee et al vs. David*, 114.
2. It is no ground to set aside a judgment by default, that the attorney of defendant, through mistake or by attending to other business, neglected to plead.—*Justin vs. Nelson*, ..... 192
3. When a matter has once been adjudicated, although it may have been improperly pleaded, yet no objection having been made to its adjudication, such adjudication is final. Thus, where a party sued, pleads as a set-off a matter not properly pleadable, but no objection is made by the adversary, the judgment will be final as to such matter of set-off.—*Thompson vs. Wineland.* ..... 243
4. Jurors, ..... 1
5. Under the plea of *non est factum* to an action of covenant, it is competent to shew a variance in the deed offered in evidence from the deed declared on.—*Treat vs. Brush*... 310
6. If the declaration allege an absolute covenant, deed offered in evidence shews the covanant to be dependent, it will be a variance, and may be taken advantage of under the plea of *non est factum*,—*Ib.*
7. An affidavit for a new trial, on the ground that a witness was absent, must shew the facts to be proved by such witness.—*Warren vs. Ritter & Ritter.* ..... 354
8. Where there are several couns in a declaration, and one is substantially defective, such defect is not cured by a judgment by default. The statute of jeofails does not reach judgments by default.—*Neidenberger vs. Campbell et al.* ..... 359
9. Where judgment by default is rendered on such a defective declaration, it is competent for the court to amend the declaration after judgment, but such amendment should not be permitted without giving defendant leave, on application, to plead.—*Ib.*
10. Where, on such a declaration in ejectment, judgment by default has been rendered against the defendant, a tenant, and the landlord has had no notice of the suit, an amendment should not be permitted without giving the landlord leave to plead.—*Ib.*
11. Where several powers of attorney are given to confess judgment on several debts in favor of, and against the same parties, it is competent and proper for the court to consolidate them and enter but one judgment.—*Genestalle vs. Waugh et al.* ..... 367
12. After a judgment has been entered up on a verdict, although strictly such judgment should be set aside before a new trial is had, yet if, on motion, the verdict is set aside and a new trial granted and had, the judgment will be deemed to have been set aside.—*Lane vs. Kingsberry.* ..... 402
13. Although exceptions must be taken to the decision of the court at the time such decision is made, it is not necessary that a bill of exceptions should then be made out and signed—One bill of exceptions made at the conclusion of a case is sufficient to embrace all the exceptions taken during the trial —*Ib.*
14. Although evidence offered may not of itself be sufficient to establish a defence, it should be admitted if it establish a link in the chain of evidence. The weight of such evidence must be left to the jury, and cannot be decided by the court.—Ib.
15. The improper granting a new trial cannot be assigned for error.—*Emmerson vs. Harriet.* ..... 413
16. Judgment cannot be rendered for greater damages than are claimed.—*Cox vs. the City of St. Louis.* ..... 431
17. Where a party has a meritorious defence, and a judgment by default has been rendered against him, it appearing that he had employed an attorney to make his defence, that his attorney had been in attendance in court until the trial of another cause had commenced, and then only left to attend to his sick family, and while so absent for a short time the suit which had been on trial was terminated by a compromise, and thus the judgment by default was had, it should be set aside.—*Stout vs. C. & T. Lewis.* .... 438
18. It appearing from the record that in a cause in which the plaintiff had taken a nonsuit, pleas filed by defendant had not been replied to, although the Circuit Court may

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have erred in causing the plaintiff to take his non-suit, the judgment will yet be affirmed.—*McDermott vs. Doyle.* .... 444
19. It is too late after verdict to except to the giving instructions.—*Mattingly vs. Moranville.* .... 604
20. A court has no power to instruct a jury to find as in case of non-suit.—*Marshall vs. Wolfe & Pascal.* .... 608
21. Rhodes vs. White. .... 623
22. Hartt vs. Leavenworth. .... 629

## PRACTICE IN THE SUPREME COURT.

1. A verdict having been found, and no motion for a new trial made, the judgment will be affirmed.—*Watson vs. Pierce & Pierce.* .... 358
2. Although there may be nothing in the record to impeach the veracity of a witness, and the verdict be against the evidence, still it will not be set aside by the appellate court if it be manifest that the issue was properly understood by the jury. There may have been something in the manner or situation of the witness that rendered him unworthy of credit.—*McAfee vs. Ryan.* .... 364
3. A writ of error will not lie to a judgment granting a new trial; it is no final judgment.—*Emmerson vs. Harriet.* .... 413
4. Nor can the improper granting a new trial be assigned for error.—*Ib.*
5. If no motion for new trial be made, neither the action of the court in giving or refusing instructions, or admitting or excluding evidence, nor of the jury in finding the verdict, will be considered.—*Rhodes* vs. *White.* .... 623
6. Where a verdict is clearly against the evidence, the judgment will be reversed, although no instruction be asked.—*Hartt* vs. *Leavenworth.* .... 629

## PRE-EMPTIONS.

1. Where by an act of Congress granting pre-emptions to settlers upon public lands a time is limited within which the settler may avail himself of the privileges of the act, and the settler within such time does all that is required to give him a right of pre-emption, the delay of the officers of government by which the pre-emptor is defeated in getting his certificate of pre-emption within the requisite time, will not defeat his right, but the certificate may be granted after the expiration of the time allowed by law.—*Perry vs. O'Hanlon.* .... 585

## REPLEVIN.

1. McDermott vs. Doyle. .... 443

## RECITAL.

1. A recital in a deed only operates as an estoppel in cases in which the declarations of the grantor would be evidence. A recital is not competent to shew title in the grantor. *Joeckel vs. Easton.* .... 118

## RIGHT OF WAY.

1. The owner of a block in a city, having made partition of the same among several persons, and in each deed made an alley running through the block the boundary of the lots, each proprietor becomes entitled to a private right of way in the alley, and to an action for its disturbance.—*Carlin vs. Paul.* .... 32
2. The right of way of necessity, exists in all cases in which an individual owns land surrounded by other lands excluding it from any public highway.—*Snyder vs. Warford et al.* .... 513
3. The act of 17th March, 1845, only provides a mode for establishing a right already existing.—*ib.*
4. A right of way is only an easement; it is no interest in land, and the act of the Legislature does not apply private property to any private use.—*ib.*

## SCHOOLS—ST. LOUIS PUBLIC.

1. The survey of the out-boundary of the town of St. Louis, made in pursuance of the act of Congress of 13th June, 1812, is *prima facie* evidence of title in the St. Louis Public Schools to the land within said boundary designated and set apart by the Surveyor General of Illinois and Missouri for the use of such schools.—*Eberle* vs. *St. Louis Public Schools.* .... 247

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2. It is however not conclusive, and may be rebutted by evidence, that a certain parcel of land embraced in such survey was neither "a town or village lot, out lot, common field lot, nor part of the commons belonging to such town," but was a vacant piece of ground not belonging to such town.—*ib.*
3. The reservation made by the act of 1812 for the use of schools, includes only the lots in the sense in which they were understood in the enumerated towns and villages; and whether a certain piece of land is such a lot, is a mixed question of law and fact.—*ib.*
4. Jurors, 1.

## SCHOOLS—COMMON.

1. Nolley et al. vs. Callaway County Court..... 448

## SECURITIES.

1. The securities of a public officer, are only responsible for his performance of the duties assigned him by law; and if the officer engage, or those who by law have the control of his official conduct, employ him in matters foreign to his office, the securities will not be bound for his acts while so employed.—*Nolley et al. vs. Callaway Co. Court.* 448
2. The law concerning school funds, requiring the clerk of the county court to keep the bonds for the loan of such funds, and the county court to renew bonds and to pass upon the sufficiency of the bonds, if by an order, or by permission of the court these duties devolve upon the treasurer, and any loss happen thereby, his securities will not be liable.—*ib.*
3. If the court permit the treasurer to use the funds as a loan, and any loss happen, his securities will not be liable.—*ib.*
4. The settlements made by an officer with a court, are not conclusive against his securities, but may be explained or disproved by them.—*ib.*
5. Warren & Cornwall vs. The State..... 583

## SHERIFF.

1. A ministerial officer is not liable in trespass for executing a writ issued under the judgment of a court having jurisdiction of the person and subject matter, although the judgment be erroneous.—*Milburn vs. Gilman*,..... 64
2. A sheriff, having collected money on execution, is notified not to pay the same over to the plaintiff, and a motion for that purpose is made in court; he is not liable to the plaintiff for the penalty of five per cent. per month, for not paying him the money until the decision of such motion.—*Conway vs. Campbell*,..... 71
3. A plaintiff in an execution, files a motion to compel the sheriff to pay over money collected under execution, and for the penalty of five per cent. per month for failing to pay on the return day—the motion being overruled, the plaintiff receives the principal sum—he cannot then have the judgment overruling the motion set aside, and proceed for the penalty.—*ib.*
4. An officer, selling property under execution, is agent of both plaintiff and defendant, and he is bound to protect the interests of both. A sheriff is not bound to accept a bid without reserve. If he can see that a sacrifice of property will be prevented by a little delay, he may return "no sale for want of bidders."—*Conway vs. Nolte*,..... 74
5. Where, at a sale, property was sold, and the purchaser had until five o'clock in the afternoon to pay the money, the law requiring the sale to be before five, the sheriff had no right to re-sell a few minutes before five, and a tender of the money on the next morning by the first purchaser is sufficient.—*ib.*
6. Where a purchaser at a sheriff's sale refuses to pay for property struck off to him, the sheriff can sell again without notice.—*Illingworth & Clark vs. Miltenberger*,..... 80
7. Milburn vs. The State,..... 188
8. A sheriff has no right to take a recognizance for the appearance of a person arrested for a contempt of court.—*The State vs. Howell, et al*,..... 613

## SLAVES.

1. The person who actually apprehends a slave, makes the affidavit and has the slave committed to jail, is to be deemed the taker up of the slave.—*Dougherty vs. Tracy*,..... 62
2. A private person has no right to call upon an officer to take up a slave; he has the right to take up the slave himself, and if he call upon an officer, and the officer arrest and commit the slave, the officer will be entitled to the reward.—*ib.*
3. Slavery may exist without any positive law authorizing it.—*Charlotte vs. Chouteau*,..... 193
4. The existence of slavery in fact is presumptive evidence of its legality.—*ib.*

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5. It is not necessary to shew any general custom in a country of holding negroes in slavery to prove its legality. If it be found to exist in fact even to a limited extent, and no positive law prohibiting it be shewn, it will be deemed legal.—*ib.*
6. It is not the policy of the slave States to favor the liberation of negroes.—*ib.*

## SPANISH GRANTS.

1. What constitutes a common field lot, within the meaning of the act of congress of 1812, is a matter of law, and to be determined by the court.—*Page vs. Scheibel*, .... ..... 167
2. It is not necessary to show a concession or any authoritative act of the Spanish government to show title to such a lot, the act of congress having made possession, cultivation, or inhabitation before 1803, evidence of title.—*ib.*
3. The act of 1812 was not intended to confer title on those who had abandoned their claims to the lots mentioned in the act, but to the last *claimant* who had not abandoned.—*ib.*
4. Removing from the village and ceasing to cultivate the lot, do not alone amount to an abandonment. To constitute an abandonment, there should be a removal with an intention to abandon, or some act amounting to a disclaimer of title.—*ib.*
5. It was not necessary under the act of 1812, that the claimant should file a claim with any officer of the federal government, the act of 1824 not being obligatory upon the claimants. That act only enabled them to procure documentary evidence of title —*ib.*
6. The act of 1812, *proprio vigore* conferred title on the claimants, and no further act was necessary on the part of the government.—*ib.*
7. The recorder had no power under the act of 1812 to confirm any title on a concession; he was authorized only to act upon inhabitation, cultivation, or possession.—*ib.*
8. Where a concession described the land as in Grand Prairie, and bounded by Little river, although the recorder in his confirmation refers to Little river as the boundary, as in the concession, if it be shewn that Grand Prairie did not in fact touch Little river, and that the lot was in Grand Prairie common fields, the boundary of Little river must be rejected.—*ib.*

## TENANTS IN COMMON.

1. Tenants in common must join in all personal actions.—*Lane vs. Dobbins* ..... 105
2. One of two tenants in common cannot by purchase of an outstanding title, or of an incumbrance, acquire title to the whole against his co-tenant—such purchase will operate to the benefit of both—and he is entitled to claim contribution of his co-tenant.—*Jones vs. Stanton*. ..... 433

## TROVER.

1. No person can maintain trover for a chose in action but the legal owner. It is not like other goods and chattels, the title to which passes by mere delivery, and for which a bailee may maintain this action.—*Webster vs. Heylman* ..... 428

## TOWNS.

1. The 6th section of the act incorporating the town of Louisiana, which provides that "the recorder shall have power in a summary manner to hear and determine all cases involving a violation of the ordinances of said town," &c., alters the general law concerning towns, and gives the recorder exclusive jurisdiction in such cases.—*Town of Louisiana vs. Hardin* ..... 551

## VAGRANTS.

1. Corporations, 2.

## VENDOR AND VENDEE.

1. In a contest between two vendees of the same vendor, either may deny the title of his vendor.—*Joeckel vs. Easton* ..... 118
2. The vendee is not tenant under, but is an adverse claimant against his vendor, and may dispute his title, or set up against him or those claiming under him, an outstanding title.—*Page vs. Hill*. ..... 149
3. The title of a purchaser under execution relates back to the time at which the lien attached, and he will be entitled to all the rights of the defendant at such time.—*ib.*
4. Liens, 6, 7.
5. A purchaser under a judgment, as to conveyances made by the defendant, is regarded as a creditor, and not as a purchaser.—*Pepper vs. Carter & Minor*. ..... 540
6. Cooley vs. Rankin. ..... 642

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## VENUE.

1. What is reasonable notice of an application for a change of venue depends upon circumstances. If the party making the application had knowledge of the cause for a change, he should give notice before the day of trial. If, however, he gives notice so soon as he learns that he has cause to apply, it will be sufficient, even if at the time the cause is called for trial.—*Reed vs. The State*. ..... 379

## WRITS.

1. A summons issued by a justice of the peace required the defendant "to appear before one of the justices of the peace," &c., "at my office," &c., omitting the words "me" or "undersigned," held to be sufficient.—*Smith* vs. *Young* ..... 566

## WRITS OF ERROR CORAM VOBIS.

1. *Exparte* Toney ..... 661